

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS

NAVY SEALS 1-3, *et al.*,

Plaintiffs,

v.

**LLOYD J. AUSTIN, III** in his official capacity as  
United States Secretary of Defense, *et al.*,

Defendants.

Case No. 4:21-cv-01236-O

**DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Defendants respectfully provide notice that several courts have recently acted on mootness issues in cases challenging the armed services' vaccination requirements for COVID-19 following rescission of that requirement. Three Courts of Appeal, including the D.C. Circuit, the Eighth Circuit and two panels of the Ninth Circuit Court of Appeals, dismissed Service members' appeals from the denial of preliminary injunctions prohibiting enforcement of the military's COVID-19 vaccination requirement, finding moot those requests for injunctive relief. *See Roth v. Austin*, No. 22-2058, 2023 WL 2531885 (8th Cir. Mar. 16, 2023) (unanimously concluding that issue was moot in light of statutory rescission); *Navy Seal 1 v. Austin*, Nos. 22-5114, 22-5135, 2023 WL 2482927 (D.C. Cir. Mar. 10, 2023) (per curiam) (dismissing appeals and vacating judgments as moot); *Short v. Berger*, Nos. 22-15755, 22-16607 (9th Cir. Feb. 24, 2023); *Dunn v. Austin*, No. 22-15286 (9th Cir. Feb. 27, 2023). Several district courts have likewise noted that challenges to the COVID-19 vaccination requirement are moot. *See Alvarado v. Austin*, No. 122CV876AJT-JFA, 2023 WL 2089246, at \*3 (E.D. Va. Feb. 17, 2023) ("requests and any relief therefrom are now stale given the Rescission Memo"); *Chancy, et al. v. Biden, et al.*, 1:22-cv-110, ECF No. 32 (N.D. Fla. Feb. 14, 2023) (dismissing case challenging military COVID-19 vaccine requirement as moot); *Clements v. Austin*, No. 2:22-2069-RMG, ECF No. 57 (D.S.C. March 7, 2023) (denying preliminary injunction as moot). Other cases related to the DoD vaccine requirement

have been voluntarily dismissed after the rescission. *See Okla. v. Biden*, No: 5:21-cv-01136, ECF Nos. 77, 78, 82 (W.D. Okla. Feb. 17, 2023 and March 7, 2023); *Church v. Biden*, No. 1:21-cv-2815, ECF No 43 (D.D.C. Jan. 23, 2023); *Air Force Major v. Austin*, No. 3:22-cv-00756, ECF No. 25 (N.D. Tex. March 7, 2023).

Dated: March 20, 2023

Respectfully submitted,

BRIAN M. BOYNTON  
Principal Deputy Assistant Attorney General  
Civil Division

ALEXANDER K. HAAS  
Director, Federal Programs Branch

ANTHONY J. COPPOLINO  
Deputy Branch Director  
Federal Programs Branch

*/s/Amy E. Powell*  
ANDREW E. CARMICHAEL (VA Bar. No. 76578)  
AMY E. POWELL  
Senior Trial Counsel  
STUART J. ROBINSON  
Senior Counsel  
ZACHARY A. AVALLONE  
COURTNEY D. ENLOW  
LIAM C. HOLLAND  
CASSANDRA M. SNYDER  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
1100 L Street, N.W.  
Washington, DC 20005  
Tel: (919) 856-4013  
Fax: (202) 616-8470  
Email: amy.powell@usdoj.gov

*Counsel for Defendants*